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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/588,405	06/06/2000	Mendy J. Mossbrook	D-43310-01	9572

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/13/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/588405

Applicant(s)

MOSSBROOK ET AL

Examiner

S. WEINSTEIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 10/16/02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-15, 17-40 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-15, 17-40 are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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It is noted that although applicants' response filed 10/16/2002 appears to be a bona fide attempt to reply, it would normally have generated a non-responsive/incomplete response letter since it did not respond to the entire Office action mailed 6/11/02, paper no. 10. However, since applicants' amendment has caused the consideration of election between species, to expedite prosecution and prevent further potential delay, this Office action is an election requirement. The examiner hopes that accompanying applicants' response to this Election requirement that all issues raised by the examiner in paper no. 10 will be addressed.

This application contains claims directed to the following patentably distinct species of the claimed invention: The claims now recite 5 separately claimed components of the substrate as follows:

Species I, wherein the substrate comprises polyvinyl alcohol (claim 6).

Species II, wherein the substrate comprises highly crystalline polyamide (claim 37).

Species III, wherein the substrate comprises one or more of acrylonitrile-butadiene copolymer, (claim 38).

Species IV, wherein the substrate comprises isobutylene-isoprene copolymer (claim 38).

Species V, wherein the substrate comprises polyacrylonitrile (claim 38).

Species VI, wherein the substrate comprises highly crystalline polypropylene (claim 39).

Species VII, wherein the substrate comprises highly crystalline polyethylene (claim 39).

Species VIII wherein the substrate comprises polyvinylidene chloride (claim 40).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, at least claim 1 is generic.

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Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

To expedite prosecution, as noted above, applicants have not addressed the entire Office action of paper no. 10. Applicants have not addressed page 5, paragraph 2 of the Office action.

To further expedite prosecution, several points raised by applicants in paper no. 12 will be addressed. It is first noted that applicants have provided three independent claims, all of which differ from each other in one limitation which limitations are seen to have been obvious in view of the art taken as a whole. That is, claim 1 recites a concentration of monomer (not found in claims 18 and 22), claim 18 recites the varnish is in the heat sealed region (which is not found in claims 1 and 22), and claim 22 recite an energy (not found in claims 1 and 18). All three of

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these recitations would be derivable through direct teachings or routine experimentation taught by the art taken as a whole. Applicants urge that Nakai does not teach the recited monofunctional monomer concentration urging that the disclosed acryloyl/morpholine is a monofunctional monomer and it is employed in a concentration of 30% by weight. No evidence is provided that the compound is a monofunctional monomer, but even if such evidence was provided, applicants are reciting a preferred composition and Nakai is only disclosing one specific varnish composition which is not disclosed as being critical. As evidenced by applicant's admission of the prior art, applicants are not the inventors of the varnish (e.g. page 23 paragraph 2 plus of the specification). Whether one uses 20% or 30% of the type of monomer in the absence of an unexpected result would have been an obvious optimization. Similarly for the energy recitation. Note too, however, that applicants disclose the use of conventional machines with ranges from 70 to 110 KV. Finally, in response to applicants issue of admissions, applicants' specification discloses that printing often extends into the heat sealed regions (page 1, para. 3) including printing covered by over print varnishes (page 2, para. 3) and that radiation curable inks and varnishes have had non-food packaging applications (page 3, para. 2).

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0661.

S. Weinstein/mn
February 10, 2003

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 2/11/03
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